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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/757,396      | 01/15/2004  | Shinji Shimada       | 038723.04           | 4964             |

7590 12/17/2004

OLIFF & BERRIDGE, PLC  
P.O. Box 19928  
Alexandria, VA 22320

EXAMINER

KAUFMAN, JOSEPH A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3754

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/757,396

Applicant(s)

SHIMADA ET AL.

Examiner

Joseph A. Kaufman

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-29 is/are pending in the application.
- 4a) Of the above claim(s) 12-16 and 19-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/15/2004
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Election/Restrictions***

1. Applicant's election with traverse of specie K in the reply filed on October 18, 2004 is acknowledged. The traversal is on the ground(s) that the examiner has not provided evidence that the embodiments do not recite a common technical feature. This is not found persuasive because each of the pumps is clearly different in its construction and function. For example, many of the disclosed pumps do not have the bar member as disclosed in the elected embodiment or the auxiliary piston. Other embodiments relate to the relationship between various volumes within the discharge passage. While all are generally pumps, their structure and the manner in which they function meet the requirements for restriction/lack of unity under section 371. Further, the search required for some embodiments is not required for others. Finally, it is not up to the applicant to determine whether or not a search is burdensome.

The requirement is still deemed proper and is therefore made FINAL.

Claims 12-16 and 19-29 have been withdrawn from consideration.

***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

3. The disclosure is objected to because of the following informalities: many of the letters "e" throughout the specification are not present. See for example page 104, last two lines, page 105, line 1, etc.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Schulman et al.

Schulman et al. shows a mounting cap 11; container 10; neck portion discussed in column 1, line 56; cylinder 22; suction valve 30; lower edge part 29; stem 13b; piston 13, 24; push-down head 12; nozzle 16; discharge valve 33 comprising a valve member; valve hole seen in Figure 2; valve seat 32; bar-like member 35 having a tip; gap around 35 seen in Figures 2 and 4 and discussed in column 2, lines 55-56; valve member 30; and resilient member 31 coupled to 35.

***Conclusion***


6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Evans, Stand et al., Smith et al., and Knickerbocker show other pumps with bar-like members.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph A. Kaufman whose telephone number is (571) 272-4928. The examiner can normally be reached on Monday-Thursday, 5:30AM-2PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Joseph A. Kaufman  
Primary Examiner  
Art Unit 3754  
12/6/04

jak  
December 6, 2004